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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

|                           |   |
|---------------------------|---|
| Proceeding                | 91203541  |
| Party                     | Plaintiff<br>Andre D. Rossouw   |
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| Submission                | Motion to Compel Discovery  |
| Filer's Name              | Andre Rossouw   |
| Filer's e-mail            | admin@googabox.com  |
| Signature                 | /9047/  |
| Date                      | 07/06/2013  |
| Attachments               | Opposers Motion To Determine Sufficiency Of Answers.pdf(211542 bytes )  |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Trademark Application No. 85358119

Mark: GOOGLEPLUS (GOOGLE +)

|                                 |   |                         |
|---------------------------------|---|-------------------------|
| Andre Rossouw (Opposer)         | ) |                         |
|                                 | ) |                         |
| vs.                             | ) | Opposition No. 91203541 |
|                                 | ) |                         |
| Google Incorporated (Applicant) | ) |                         |

**Motion To Determine Sufficiency  
Of Applicant Google's  
Answers And Objections**

AS PURSUANT TO RULE 37 CFR §2.120(h) and FRCP 36(a);

Hereby respectfully :

Opposer moves the Trademark Trial and Appeals Board for an Order compelling applicant Google Inc. to respond fully to Opposer's Interrogatories Nos.

2,3,5,6,7,8,9,10,20,26,29,34,35,39,40,41,43,46,49,50,52,56,57.

Requests for Admission Nos.

1,2,3,7,8,9,12,13,14,15,16,17,18,19,22,25,26,28,33,34,36,37,42,43,46,47,48,51,64,65,66,67,  
69,70,71,72,73

Requests for Production of Documents Nos. 1-5 and 8 and

## **I. INTRODUCTION**

Applicant keeps asserting that somehow the “google” mark and “Google+” (Googleplus) mark as well as all other Google marks has all the same “Commercial impression” and in fact asserts that it's all one and the same mark. Applicant implies that all these marks will be seen as the “Google” mark yet ALL these marks have different meanings for different services. It is applicant's belief that when the public observes the mark “Google” by itself they also refer to the mark “Google” by itself as a Social Network, a financial service, a discussion forum etc. and if this is in fact true, then WHY did applicant feel the need to create these different marks to begin with? Further is it is evident that all these “other” Google marks have non-descriptive” add-ons which changes the whole concept and meaning to the mark “Google” as meaning “something else” and if so as is evident that these other marks DO mean something else, then the mark “Google” can not be relied upon anymore (due to it's stand-alone meaning) to be used as an “affirmative defense” and rights. If however it should be argued that the add-

on to the mark "Google" is "descriptive" in nature i.e: "Google Phones" Google Hats" etc. THEN applicant would be well within their right to enter those classes of goods using their Google mark. The difference between "descriptive" and "non-descriptive" it should be argued is that "descriptive" clearly has a broad "right of use" and "non-descriptive" changes an original mark entirely into the actual mark meaning something new. This is common sense and if so then applicant can not use their original mark as an affirmative defense to "rights" in this instance seeing the mark "Google+ (Googleplus) is in fact "non-descriptive" and is obviously seen and promoted as something entirely different than "search" or a "search engine" such as the mark "Google" is seen by the public. All these "other" marks even have their own web landing pages to the different perspective services they represent, so it CAN NOT with fairness be asserted by applicant, that the public views all these marks as ONE mark or ONE meaning, because in fact they mean different things. What opposer is trying to establish is not whether the public is familiar with the Google mark, but whether applicant can assert "rights" to a new different, non-descriptive composed mark meaning something entirely different, when this newly composed mark is proven in fact as sounding too similar to that of opposers own mark, and if opposer can prove that applicant had all the manpower and funds to properly search for similar marks also representing the service they are trying to Register for. A "Right to Register" the new mark should be weighed against all elements involved and NOT just by whether the new mark also contains applicant's already famous mark Google. Here the circumstances are that applicant relies solely on their mark "Google" to allow them the 'right to register" and neglects all other elements involved, Opposer has stated before that if this is allowed purely on that assumption, it would open Pandora's box, and ALL Trademarks would be in jeopardy from large corporations and famous marks. It must

also be considered that opposer was Registered 2-3 years prior to all these marks shown in applicants comparison table. Google Groups was NOT Registered or perceived as a Social Network. Google Groups was a “Discussion Forum” Discussing topics and Networking one's products or profession in a social environment for success, are 2 different things entirely. The Google mark by ITSELF was never presented or perceived as a Social Network. All other marks that had a add-on to the Google mark as a Social Network or form of Social Network came well AFTER opposers mark was already Registered. *See comparison table below:*

|   |   |
|---|---|
| Google Buzz (UNKNOWN CLASS)             | Never filed <b>(Abandoned one year later)</b> |
| Google Goggles (Not class 045)          | Filed 12/04/2009 Registered 08/23/2011        |
| Google Wave (Not class 045)             | Filed 06/19/2009 <b>(Abandoned May 2012)</b>  |
| Google Talk (Not class 045)             | Filed 08/23/2005 Registered 04/02/2013        |
| Google Sidewiki (Not class 045)         | Filed 09/21/2009 Registered 05/17/2011        |
| Google TV (Not class 045)               | Filed 08/23/2011 Registered 12/25/2012        |
| Google Latitude <b>(Class 045)</b>      | Filed 09/25/2009 Registered 06/21/2011        |
| Google Currents <b>(Class 045)</b>      | Filed 03/08/2012 Registered 03/19/2013        |
| Google+ (Googleplus) <b>(Class 045)</b> | Filed 06/28/2011 Pending Opposition           |
| <b>Googabox (Class 045)</b>             | <b>Filed 08/31/2007 Registered 12/02/2008</b> |

**All marks above were filed AFTER Applicant's marks in 2007, except “Google Talk” which however was NOT in class 045 and was also Registered 5 years AFTER Opposers mark. All other marks cited by applicant including above marks NOT in class 045 and marks filed AFTER opposers mark should be deemed irrelevant.**

*(In Fits Corporation KK **Serial No. 76501790**) The Board found LOVE PASSPORT and PASSPORT confusingly similar for perfume, thus the Board rejected Applicant's argument regarding the differing connotations of the marks.*

Although “Google” and “Googa” do sound very similar, “Googabox as a whole does not, and is Registered in a different class than Google, does NOT mean “search” and it's meaning a

part of an “expression of surprise” however now being in the SAME class and the added on non-descriptive phrase of “Plus” to the Google mark, both marks share the same first 4 letters, 3 syllables same “a” sound and ends in an “s” sound, much too close representing the same exact service online. “GOOGLEPLUS”/ “GOOGABOX”.

Also see (Wyeth vs Graham, Opposition # **91124967**) (October 24, 2005) [not citing] In finding confusion likely, the Board provided an analysis of the similarities between the marks **ADVIL** for analgesics and **ADVAILIFE** for vitamins, minerals, and nutritional supplements.

Applicant's “right to register” should be based upon the following:

1. Actual “use of the mark” OR
2. Applying for “Trademark Registration”
3. The absence of “Conflicting Marks”
4. Exclusive Trademark Rights

The first two prongs are satisfied however the third and fourth prongs are NOT and SHOULD not qualify the “Right to Register” as indeed there is a conflicting mark in this instance that shares the same first 4 letters, same syllables. Same “a” sound and ending in the same sound of “s” presenting a STRONG resemblance and being applicant also promotes their mark as “Googleplus” and “Google Plus” overall commercial impression intensifies and is problematic not only in SOUND, but in VISUAL as well, and confusion is very likely as to who is who and probable mistaken perceived connection. **Googleplus/ Googabox.**

Opposer asserts:

(1) To recognize that applicant has, although responded in a timely manner, failed to satisfactorily DISCLOSE “Admission Requests” as requested by opposing party and still not produced satisfactorily up until the time of filing of this motion, as opposing party has in good faith conferred or attempted to confer with Appointed Council of applicant in an effort to obtain the “Admission Requests” satisfactorily.

(2) To recognize that opposing party has in “proper time” given applicant notice to produce required Admission Requests.

(3) That applicant be compelled to satisfactorily respond to “Admission Requests” as requested by opposing party.

(4) To recognize that opposing party has not requested any part of “Admission Requests” from applicant suggesting any “frivolous” request OR purpose, but that ALL requested “Admission Requests” are indeed detrimental to assist opposing party in proving it's case.

(5) To recognize that opposing party was indeed in contact via phone and e-mail with applicant numerous times after “Admission Requests” was served upon applicant, discussing “Admission Requests”, and/ or to which applicant had ample opportunity to rectify to sufficient answers or objections, and declined not to.

**2. Opposers complaint to responses and objections of applicant's “Responses to First Set Of Interrogatories”**

Applicant seems to be using vaguely unfounded/ unexplained objections to all interrogatory questions mainly as *“Imposing upon Google obligations broader than, or inconsistent with, the Federal Rules of Civil Procedure, the TT AB' s rules or procedures, any applicable Order of the Board, or any applicable regulations and case law” as well as, Google objects to this interrogatory to the extent that it seeks trade secret, confidential or commercially sensitive information and attorney/ client privileges”*

To this Opposer charges that applicant is rather “avoiding” satisfactory answers to ALL interrogatories using these broad objections in general and not “specific” to all interrogatories, especially to applicant's use of the words “any applicable order of the Board” Opposer believes the following objections and answers to be insufficient in this broad unspecific perspective suggested by applicant.

As to Interrogatory (1) response by applicant opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. Applicant denies answering the obvious based on vague, and “non specific” objections or any “case law” to support the objection. The mark “Google” is part of the newly created mark “Googleplus” and because by applicant's own statements in the “answer to opposition” it seems applicant is relying on sustaining a “Trademark right” in this instance due to the prevalence of the mark “Google” which deems this interrogatory necessary to establish relevancy of the mark Google (Unsatisfactory Answer)

As to Interrogatory (2& 3) response by applicant opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. The question posed was not whether or not the mark “Orkut” was used “in connection” with Google's services, but whether or not the mark “Orkut” was used as an “annotation” to the mark “Google” and so presented to the public, and whether the mark “Orkut” was “intensely and obviously” promoted alongside the mark “Google” This question is relevant to opposer to show that the mark “Google” was never used with the add-on of the ORKUT mark to the Google mark, but presented as “ORKUT By Google” to the services of “social networking” PRIOR to opposer's use of the mark “Googabox” (Unsatisfactory Answer)

As to Interrogatory (5) response by applicant opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. Again the question was not whether or not applicant has provided social networking services in “connection” with GOOGLE-formative marks, but the question was specifically whether or not the mark “Google” was used “Literally” associated with Social Networking services and in particular so. (Unsatisfactory Answer)



As to Interrogatory (6 & 7 & 8) response by applicant opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. This interrogatory is deemed relevant as the mark “Google” is part of the newly created mark “Googleplus” and because by applicant's own statements in the “answer to opposition” it seems applicant is relying on sustaining a “Trademark right” in this instance due to the prevalence of the mark “Google” which deems this interrogatory relevant to opposer to determine such. (Unsatisfactory Answer)

As to Interrogatory (9) response by applicant opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. This interrogatory is deemed relevant as opposer is intending to show that the mark “ORKUT” was not presented as an annotation to the mark Google for social networking services and if indeed by applicant's claims that the mark “Google” somehow represented “Social Networking” why then was a fresh mark needed to represent “Social Networking” and this fresh mark being “Orkut”? Opposer is intending to show with this interrogatory that the mark “Google” was NOT marketed or promoted as part of a mark literally and specifically representing “Social Networking” BEFORE opposer's mark, and that applicant's specific only attempt at Social Networking Services before opposer, was the introduction of a whole NEW mark called “Orkut”. (Unsatisfactory Answer)

As to Interrogatory (10) response by applicant opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. Opposer is contending on showing that applicant was indeed aware of opposer's mark at the time of the Registration application of opposer's mark and if applicant denies

knowledge, then proper facts and arguments can be presented by opposer to impeach.

(Unsatisfactory Answer)

As to Interrogatory (11 & 12) response by applicant opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. Again the question was not whether or not applicant has provided social networking services in “connection” with GOOGLE-formative marks, but the question was specifically whether or not the mark “Google Latitude” was the first time the mark “Google” was attached with an add-on (Google Latitude) and promoted “Literally” and specifically for the first time as Social Networking services and in particular so.

(Unsatisfactory Answer)

As to Interrogatory (13) response by applicant, opposer contends:

Unsatisfactory and non specific objections without any specific legal substance to allow for objection. The question referred to “distinct resemblance” between the mark “Googlebuzz” and “Googabox” and obvious for the meaning of “distinct resemblance” in it's entirety and not only “resemblance” as stated within applicant's answer, and therefore not constituting “vagueness” by any means. Question is relevant as opposer is contending to show that a trend with applicant to literally add-ons to it's formative mark “Google” started developing specifically for the service of Social Networking AFTER opposer filed for and obtained a Registered Trademark to opposer's mark “Googabox” and therefore opposer's mark should get first right of use as opposer also contends that opposers mark is too similar in sound/ appearance to applicant's latest add-on filing to it's mark “Google” for Registration, in particular the mark in question “Google+” specifically for the service of “Social Networking” and so specifically stated, which was NOT the case for the literal add-on “Groups” hence

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“Orkut” was introduced as specifically for the service of “Social Networking” (Unsatisfactory Answer)

**Interrogatory requests were presented to applicant Jan 23<sup>rd</sup> 2013**

**2. Opposers complaint to responses and objections of applicant to “Request of First Set Of Admissions”**

Admissions 1, 2, 3, 7 (Opposer requires YES or DENIED responses to these)

Admission 8 (Opposer is demanding applicant study internet online dictionary meaning)

Admission 9 (Opposer demands applicant adheres to the request, yes or denied)

Admission 12 (Opposer is demanding applicant responds to the request truthfully and true to the request)

Admissions 13,14,15,16,17,19,25,26,28,33,34,36,37. (Opposer is demanding applicant respond to the request truthfully and true to the request or face impeachment)

Admission 18 (This request calls for a yes or no response. Applicant's response is misconstruing the request)

Admission 22 (This request is hypothetical and opposer demands response true to the request)

Admissions 42,43 (Deliberate misconstrued response, opposer demands a proper response true to the request)

Admissions 46,47,51 (Applicant should know the “2 marks in question” to be opposers mark and applicant's mark trying to Register. Opposer is demanding a proper response)

Admission 48 (Opposer is demanding that applicant responds to the actual requests)

Admissions 64,70,71,72,73 (Opposer is demanding that applicant responds a yes or no answer definitively to the request)

Admission 65 (Opposer is demanding that applicant responds a yes or no response definitively to the request as the request calls for “around” the 7<sup>th</sup> of November meaning give or take a few days more or less and this type of response is misconstruing the accuracy of the request)

Admissions 66,67 (Applicants objection to “characterization” is vague and unexplained, Opposer charges that the mark Google is the basis for applicants affirmative defense. If applicant disagrees opposer is demanding an explanation thereof seeing this response is contrary of applicants other statements and defense in this regard)

Admission 69 (Applicant is objecting to the obvious and opposer demands a proper response as there is NO feasible basis for an objection to this request and goes to to the point of “Moral Turpitude” in characterization)

**IN SUPPORT OF THIS MOTION:**

Opposing party is of the impression that applicant is avoiding satisfactory answers to Interrogatory in an attempt to undermine the merits of the opposition, when in fact opposer claims their newly created mark, being promoted as both “Google+” , “Google Plus” AND “Googleplus” should be observed as overwhelmingly similar in sound AND appearance to opposer’s mark “Googabox”, especially when both marks in question represents the same services namely “social networking”, or perhaps applicant is simply of the belief that it shouldn't MATTER whether or not their newly created mark is “too similar” to opposing party's mark because THEY should get “special treatment” any way in light of prevalence of their original mark “Google”, regardless of opposer's stance that the mark “Google” is not being opposed but the newly created mark Googleplus in fact is the opposed mark, and the more than likely “adverse” effect it has and will further have on opposer's mark Googabox, representing “social

networking". Opposing party is obligated to "prove it's case" and therefore needs satisfactory response to interrogatory.

## **2. Opposers complaint to responses and objections by applicant to "Request of First Set Of Production"**

Production 1,2 (Yet to receive)

Production 3 (Opposer disagrees this to be a viable objection being it pertains to 'abandoned' marks and to the reason for abandonment which should not affect applicants current operations)

Production 4, 5 (Opposer is dissatisfied with this response as this "if" a part of applicants operations the daily operations thereof SHOULD be able to be supplied in document form as to subscriptions to the Gazette and applicants monitoring thereof, plus any other department duties apart from the Gazette that operates as "watchdog" to these duties)

Production 8 (Opposer requests applicant to produce a statement based on their amount expenditures on the mark "Google+" for it's promotion and creation, so as to show the extreme amounts that was spend on this in contrast to opposers mark, to proof WHY the mark has gained instant fame overnight, and not because the mark is "better" than opposers mark)

### **In General To Production Of Documents**

Applicant states to Production of documents nos. **1,2,4 and 5**, that " Google will produce relevant, non-privileged, and non-confidential documents sufficient" and not what opposer deems as relevant to opposers case. Opposer reminds applicant that it is not applicant that decides WHAT is relevant and what is not but indeed the BOARD'S decision to what is relevant and what is not. It is this arrogance and ignorance that has delayed these proceeding

thus far to being “out of scope” non compliance” and “harassment” from applicant due to burdensome, non relevant requests and responses.

Applicant states to Production of documents **nos. 3** that “this request to the extent that it seeks trade secret, confidential or commercially sensitive information, yet asserts that is totally in order to request financial documents from opposer and information regarding employees and future plans opposer may have to his mark. Is the “protective order” in place not the same for applicant? Such as applicant is charging opposer should adhere to because there is such a protective order in place? Again this shows arrogance and ignorance that has delayed these proceeding thus far to being “out of scope” non compliance” and “harassment” from applicant due to burdensome, non relevant requests and responses.

Applicant states to Production of documents **nos. 6** as equally available yet scrutinize opposers claims of “equally available” as “opposer should “make the effort to supply this information” regardless?

**In closing:** Opposer is charging that applicant has the belief they are under a “different set of rules” when it comes to Discovery. See opposers “Objection to applicants Motion To Compel”  
Opposing party hereby respectfully request the BOARD to compel applicant to provide opposing party satisfactory or sufficient responses to Requests so opposing party can present the evidence thereof, and ultimately prove Opposing party's case before the BOARD.

***[Included with this Motion all applicant's Responses as Exhibits 1, 2 and 3]***

So entered in good faith this day of July 5<sup>th</sup> 2013 by opposing party.

 \_\_\_\_\_ (Pro Se)  
**Andre Rossouw (Googabox) (Googabox.com)**

**Opposition No. 91203541**

## *Proof Of Service*

*I declare that:*

I am over the age of eighteen years

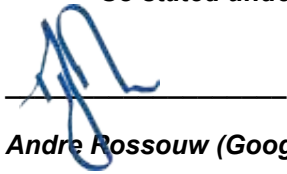
I am the opposing party of Googabox (Googabox.com)

*That I have:*

*Served upon applicant by means of mutual agreement using “electronic” procedure  
by sending a copy to applicant's e-mail address of record at the TTAB  
at e-mail address “[EBall@fenwick.com](mailto:EBall@fenwick.com)” and specifically to the attention of  
Eric Ball (Counsel for applicant)*

***Executed in Nashville, Tn***

***So stated under perjury as true and correct this day July 5th 2013 by opposer for opposer***



***Andre Rossouw (Googabox) (Googabox.com)***